

### **REMARKS**

Claims 42 and 43 were pending in the case. Upon entry of this Amendment, Claims 42 and 43 will remain pending in the case.

The Office Action indicates that the application contains sequence disclosures that are encompassed by the definitions for nucleotide and/or amino acid sequences as set forth in 37 C.F.R. Section 1.821 et seq., but adds that the application fails to comply with the requirements for reasons set forth in an attached Raw Sequence Listing Error Report. However, Applicants found no such Raw Sequence Listing Error Report attached to the Office Action, and therefore cannot respond to that matter. However, Applicants point out that a revised Sequence Listing in both paper and computer readable form were submitted in this case on **February 13, 2003** as discussed in the Amendment filed on that date as well. Applicants respectfully request that the Examiner confirm receipt of that February 13, 2003 revised Sequence Listing and advise whether that resolves this matter or whether changes over that revised Sequence Listing are being requested.

Applicants acknowledge with appreciation the withdrawal of the 35 USC Section 112, second paragraph rejections as set forth on pages 2 and 3 of the Office Action, and the withdrawal of the objection to Claim 42 as set forth in the Office Action on page 3.

With regard the assertion on page 3 of the Office Action that the oath or declaration is defective because it fails to identify the application by application number, Applicants respectfully explain to the Examiner that he is confused on his rules in this regard. When a case is initially filed by an applicant with the oath or declaration, it is not even possible for an applicant to know in advance what application number will be assigned to the case, therefore it is sufficient that the oath or declaration contain the title of the invention and be included with the specification in the original filing. Even the Patent Office's own form Declaration, Form SB/01 available on its web site provides a check box option where one can either identify the application by serial number or filing date (option 2) or, in the alternative, attach the oath and declaration to the specification upon filing with no application serial number being required (option 1). See also MPEP Section 602 in its section entitled "Identification of Application" and the paragraph dealing there under with acceptable

minimums of information in an oath or declaration when it is filed on the application filing date. Applicants respectfully request that the Examiner withdraw his objection to the declaration filed in this case.

The Office Action rejects Claims 42 and 43 under 35 USC Section 112, first paragraph. Applicant acknowledges with appreciation that the first two groupings of nucleic acids described on page 4 of the Office Action are considered to be adequately described. Applicants respectfully traverse the Office Action's conclusion that sequences at least 40% identical lacks adequate written description for reasons set forth in prior Amendments.

However, to remove issues from the case, Applicants have amended the claims in accordance to remove the 40% identity concept, but have added, in accordance with the Examiner's language appearing on page 7 of the Office Action, language directed to include sequences which encode fragments of a polypeptide having an amino acid sequence as set forth in SEQ ID NO: 2. Support for this amendment may be found on page 7, lines 23-25 among other places, in the specification.

Applicants believe the claims are in condition for allowance. Review and reconsideration of the claims and allowance thereof are respectfully requested.

If the Examiner is of the opinion that the instant application is in condition for other than allowance, he is requested to contact the applicants' Attorney at the telephone number given below so that additional changes may be discussed.

Respectfully submitted,

By



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